IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

1. Shripal & Another Vs. State of Raj.
(D.B. Criminal Appeal No.354/2004)
2. Beerbal Vs. State of Raj.
(D.B. Criminal Appeal No.396/2004)
3. Atal Bihari Vs. State of Raj.
(D.B. Criminal Appeal No.300/2004)
4. Brij Mohan Vs. State of Raj.
(D.B. Criminal Appeal No.338/2004)
5. Gobri Lal Vs. State of Raj.
(D.B. Criminal Appeal No.366/2004)
6. Banshi Lal & Another Vs. State of Raj.
(D.B. Criminal Appeal No.367/2004)
7. Chatra @ Chaturbhuj Vs. State of Rajasthan
(D.B. Criminal Appeal No.732/2004)

D. B. Criminal Appeals under Sec.374 (2) Cr.P.C. against the judgment dated 28-2-2004 in Sessions Case No.81/2003 passed by Shri Mohd. Anwar Ali, RHJS, Additional Sessions Judge (Fast Track) No.2 Baran (Head Quarter Chhabra).

Date of Judgment: May 10, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. Nemi Chand Chaudhary] for the appellants.
Mr. Vijay Chaudhary]
Mr. PRS Rajawat]
Mr. Sanjay Sharma]
Mr. Rajesh Goswami]
Mrs. Kamla Jain]
Mr. Mahendra Singh]
Mr. K.A.Khan]
Mr. Rohan Jain]

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

This is yet another case of land dispute in which one person lost

his life and others sustained injuries. The appellants, nine in number, were indicted before the learned Additional Sessions Judge (Fast Track) No.2 Baran, who vide judgment dated February 28, 2003 convicted and sentenced them as under:-

Appellants Beerbal, Shripal, Danmal, Chatra @ Chaturbhuj, Gobri Lal, Banshi Lal, Mukut Bihari, Brij Mohan & Atal Bihari:

U/s.147 IPC:

Each to suffer rigorous imprisonment for two years and fine of Rs.500/-, in default to further suffer simple imprisonment for one month.

U/s.148 IPC:

Each to suffer rigorous imprisonment for two years and fine of Rs.500/-, in default to further suffer simple imprisonment for one month.

U/s.324/149 IPC:

Each to suffer rigorous imprisonment for two years and fine of Rs.500/-, in default to further suffer simple imprisonment for one month.

U/s.323/149 IPC:

Each to suffer rigorous imprisonment for one year and fine of Rs.500/-, in default to further suffer simple imprisonment for one month.

Appellants Beerbal, Shripal and Danmal:
U/s.302 IPC:

Each to suffer imprisonment for life and fine of Rs.5000/-, in default to further suffer simple imprisonment for six months.

Appellants Chatra @ Chaturbhuj, Gobri Lal, Banshi Lal, Mukut Bihari, Brij Mohan & Atal Bihari:
U/s.302/149 IPC:

Each to suffer imprisonment for life and fine of Rs.5000/-, in default to further suffer simple imprisonment for six months.

The substantive sentences were ordered to run concurrently.

2. It is the prosecution story that on March 2, 1998, Ram Prasad ASI of Police Station Atru on receiving information over telephone that there was melee on the field of Dhanna Lal, rushed to the place of incident, where Rekhraj (Pw.6) submitted a written report (Ex.P-19) to him to the effect that around 9 AM while he along with Dhanna and others was reaping mustard crop at the field of Dhanna, 10-12 assailants including Beerbal and Danmal armed with deadly weapons came over there. Beerbal caused injury with Gandasa on his left hand. Dhanna (since deceased) and three others also received injuries. On that report a case under sections 307, 147, 447, 148 and 149 IPC was registered and investigation commenced. In the course of investigation Dhanna Lal died and section 302 IPC came to be added. Necessary memos were drawn, statements of witnesses were recorded and after usual investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No.2 Baran (Head Quarter Chhabra). Charges under sections 147, 148, 302 alternatively 302/149, 324/149 and 323/149 IPC were framed against the accused, who denied the charges and claimed trial. The prosecution in support of its case examined as may as 19 witnesses. In the explanation under Sec.313 Cr.P.C., the appellants claimed innocence. One witness in support of their defence was examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

3. Having carefully gone through the record with the assistance of learned counsel for the parties we notice that death of Dhanna Lal was homicidal in nature. As per Post Mortem Report (Ex.P-34) following ante

mortem injuries were found on dead body:-

1. Incised wound 7 x 2 x 3cm deep to bone vertical on frontal scalp.
2. Lacerated wound 2 x 1 x ½cm of left knee.
3. Incised wound 2 x 1 x ½ left arm.
4. Swelling 4 x 3 left arm.
5. Abrasion left calf 1 x 1cm.

In the opinion of Dr. Purshotam Jhanwar (Pw.15) the cause of death was hemorrhagic shock due to injury to brain.

4. Rekhraj (Pw.6), Shanti Lal (Pw.7), Gajanand (Pw.9) and Gajendra (Pw.17) also sustained injuries in the course of incident. Since these witnesses were examined by the prosecution as injured eye witnesses, we proceed to scan their evidence.

5. Rekhraj (Pw.6) in his deposition stated that on the date of incident he and his brother Hariom had gone to the field of Dhanna Lal to reap mustard crop by thresher. He found Dhanna Lal, his two sons and nephew there. Around 9 AM Beerbal Nayak, Danmal Nayak along with 10-12 persons came over there. Beerbal and Danmal were armed with Gandasis. Beerbal demanded explanation from Rekhraj about his presence. Rekhraj told him that he had come for the purpose of reaping mustard and his thresher was parked in the field of Bheru Lal. As soon as Rekhraj proceeded to the field of Bheru Lal, Beerbal followed him and inflicted Gandasi-blow on his hands. Beerbal and Danmal gave Gandasi blows on the person of Dhanna Lal. Dhanna Lal's sons and nephew were also given beating.

6. Shanti Lal (Pw.7) deposed that he had purchased 10 bighas land

from accused Chatra Nayak in consideration of Rs.15000/-. Although he used to plough the said land for last 10 years, in the land records it stood in the name of accused Chatra Nayak. On the date of incident while they were reaping mustard crop, the appellants came over there. Beerbal inflicted gandasa blow from sharp side on the head of his father Dhanna as a result of which he fell down thereafter Danmal and Shripal caused injuries on the person of Dhanna.

7. Testimony of Rekhraj and Shanti Lal gets corroboration from the statement of Gajanand (Pw.9). Gajanand however admitted that land where incident took place entered in the name of accused Chatra Nayak.

> "वर्तमान में उक्त जमीन चतरा नायक के ही खाते में दर्ज है।"

8. Birdhi Lal Patwari (Pw.19) deposed that police received from him copies of revenue record of land bearing Khasra No.214. In his cross examination, he however stated thus:-

> "यह मैं नहीं बता सकता कि पुलिस ने मुझसे यह रेवेन्यू रिकार्ड क्यों प्राप्त किया। मुझे यह जरूर पता था कि इस भूमि पर बीरबल का कब्जा चला आ रहा है और उसने फसल बोई।"

9. Jamna Lal (Dw.1) in his deposition stated that his land situated adjacent to the land of Chatra and for two years he himself did the land of Chatra plough. The year in which Dhana died, Beerbal had sown mustard on the said land.

10. Fact situation that emerges from the evidence adduced at the trial may be summarized thus:-

(i) Accused Chatra was the Khatedar tenant of land where the incident had taken place. Although case of complainant party was that the land was purchased by Dhanna Lal from Chatra but no document to show the transaction of sale, was produced.

(ii) It could not be established by the prosecution that mustard crop was sown by Dhanna Lal.

(iii) Except Beerbal and Dan Mal all other accused belonged to other villages as admitted by Gajanand (Pw.9) in his cross examination.

(iv) Prosecution could only establish presence of Beerbal, Danmal and Shripal at the place of incident beyond a reasonable doubt.

11. The right of private defence against criminal trespass entitled the person in actual physical possession to use such force as is necessary to maintain his own possession and to turn away the intruder even by the use of force if necessary. Since the complainant party in the instant case entered into the land with thresher, the act of mischief had already begun, there was more than an apprehension of danger to the property and the right of private defence had come into existence. Under Section 97 IPC the right of private defence of property arises only against an act which falls under the definition of one of four offences specified therein viz. theft, robbery, mischief or criminal trespass or an attempt to commit any of these offences. It is well settled that even if an accused does not plead self-defence, it is open to the court to consider such a plea if the same arises from material on record. In the instant case as already noticed, the act of complainant party comes within the definition of attempt to commit mischief and criminal

trespass.

12. The law is clear that the right of private defence extends to the causing of death in certain specified situations, but there is such a right against any assault on the person which extends only to the causing of such harm as is necessary to avoid the danger. The second exception to section 300 IPC deals with the case when a person exceeds the right of private defence. If the excess is intentional, the offence is murder; if unintentional, it is culpable homicide. In the case on hand, accused Beerbal, who was in the possession of land on the date of incident would undoubtedly have a reasonable apprehension of mischief being caused by the complainant party to the crop sown by him, and was therefore entitled to defend his property in exercise of his right of private defence. But large number of injuries on the deceased however clearly show that Beerbal had exceeded his right of private defence. His case is therefore, completely taken out of the purview of Section 302 IPC and falls within Exception 2 to Section 300 IPC. In view of the finding that Beerbal exceeded his right of private defence, the common object with which the accused were charged failed and their conviction under sections 147, 148, and 149 IPC cannot be sustained.

13. Since participation of accused Danmal and Shripal along with Beerbal in committing offence is established, we find them guilty under section 304 Part II read with 34 IPC. However in the facts and circumstances of the case possibility of over implication of accused Chatra @ Chaturbhuj, Gobri Lal, Banshi Lal, Mukut Bihari, Brij Mohan and Atal Bihari cannot be ruled out and they are entitled to benefit of doubt.

14. For these reasons, we dispose of instant appeals in the following terms:-

(i) We allow the appeals of appellants Chatra @ Chaturbhuj, Gobri Lal, Banshi Lal, Mukut Bihari, Brij Mohan and Atal Bihari and set aside their conviction and sentence under sections 147, 148, 302/149, 324/149 and 323/149 IPC. All these appellants are on bail, they need not surrender and their bail bonds stand discharged.

(ii) We partly allow the appeal of appellants Beerbal, Shripal and Dan Mal and instead of section 302 we convict each of them under section 304 part II read with 34 IPC. Looking to the fact that all these appellants have already undergone confinement for a period more than 6 years the ends of justice would be met in sentencing them to the period already undergone by them in confinement. We however acquit them of the charges under sections 147, 148, 324/149 and 323/149 IPC. The appellants Beerbal, Shripal and Dan Mal, who are in jail, shall be set at liberty forthwith, if they are not required to be detained in any other case.

(iii) The impugned judgment of learned trial court stands modified as indicated above.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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